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SUBJECT: HOST COUNTRY - AMERICAN LEGAL SYSTEM
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1. FOLLOWING ARE DEPT COMMENTS ON UN LEGAL COUNSEL SUY'S REMARKS ON AMERICAN LEGAL SYSTEM PAPER. USUN SHOULD DRAW UPON THEM, AS APPROPRIATE.

2. GENERAL STATEMENT: IN EVALUATING THE PAPER, "ASPECTS OF THE AMERICAN LEGAL SYSTEM IN THE CONTEXT OF SECURITY OF DIPLOMATS ACCREDITED TO THE UNITED NATIONS" (ALS), IT IS MOST IMPORTANT TO KEEP IN MIND THE CONTEXT IN WHICH IT WAS PREPARED AND PRESENTED. THE UNITED STATES, AS HOST COUNTRY, HAD DISCERNED THAT MEMBERS OF THE UN COMMUNITY WERE DESIROUS OF BEING MORE FULLY INFORMED OF THE CRIMINAL LAW, THE PROCEDURES FOR ITS ADJUDICATION, AND THE FUNDAMENTAL CONCEPTS UNDERLYING THE LAW AND PROCEDURES APPLICABLE IN THE HOST COUNTRY, WITH PARTICULAR EMPHASIS ON THE LAWS AND PROCEDURES APPLICABLE IN NEW YORK STATE. WITH THIS IN MIND, THE CORPORATION COUNSEL OF NEW YORK CITY UNDERTOOK TO PREPARE A DOCUMENT WHICH WOULD ASSIST IN FAMILIARIZING THE DIPLOMATIC COMMUNITY WITH THE LEGAL SYSTEM IN EFFECT IN ITS
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IMMEDIATE ENVIRONMENT. THIS DOCUMENT WAS NOT INTENDED AS A

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COMPREHENSIVE STUDY OF NEW YORK LAW, NOR OF FEDERAL LAW, NOR OF INTERNATIONAL LAW. IT WAS INTENDED TO INFORM AND FAMILIARIZE THE DIPLOMATIC COMMUNITY WITH SOME OF THOSE

FUNDAMENTAL CONCEPTS WHICH UNDERLIE OUR SYSTEM, WHILE ALSO REVIEWING SELECTIVELY LAWS AND PROCEDURES WHICH EMBODY AND FULFILL THOSE CONCEPTS. ACCORDINGLY THE DOCUMENT IS NOT INCOMPLETE BY INADVERTENCE, IT IS BRIEF AND SELECTIVE BY DESIGN. ADMITTEDLY, SOME RELEVANT POINTS MAY HAVE BEEN OVERLOOKED IN THE PREPARATION OF THIS PAPER, AND OUR DELEGATION WOULD BE PLEASED TO RESPOND TO ANY INQUIRIES FOR INFORMATION IN THIS REGARD. BUT IT MUST BE RECALLED THAT THE THRUST OF THE PAPER WAS NOT A COMPREHENSIVE ANALYSIS OF THE LAW, OR A DEFENSE OF THE PRACTICES OF THE HOST COUNTRY IN IMPLEMENTING THE LAW; RATHER IT WAS PRESENTED AS A SUCCINCT MEANS OF FAMILIARIZING INDIVIDUALS WITH A LEGAL SYSTEM WHICH MAY BE FOREIGN TO THEM. SOME OF THE COMMENTS MADE BY THE UN LEGAL COUNSEL, MR. SUY, SUGGEST THAT HE HAS INTERPRETED THE PAPER AS CONSTITUTING SOMETHING OTHER THAN IT WAS INTENDED TO BE.

3. REGARDING SUY'S COMMENTS ON PARA 12 OF ALS: PARA 12 STATES, IN PART, THAT A DIPLOMAT "MAY SERVE AS AN ACCESSIBLE SYMBOL OF THE IDEAS BEING PROTESTED." SUY HAS MISINTERPRETED THIS STATEMENT. IT MEANS THAT THOSE PROTESTING MAY FOCUS THEIR ATTENTION ON A DIPLOMAT AS AN ACCESSIBLE SYMBOL OF A POLICY THEY OPPOSE. UNDER THESE CIRCUMSTANCES, THE DIPLOMAT SHOULD UNDERSTAND THAT THE DEMONSTRATION MAY NOT BE PERSONALLY ORIENTED AGAINST HIM. THE PARAGRAPH CONCLUDES BY STATING THAT, NEVERTHELESS, WHEN AN ATTACK OCCURS, A CRIME IS COMMITTED AND AN ARREST IS IN ORDER. SUY APPEARS TO GO OUT OF HIS WAY TO RAISE A QUESTION UNDER U.S. CONSTITUTIONAL LAW, I.E., WHETHER THE ACT REFERRED TO IN PARA 12 IS PROPERLY ONE WITHIN FREEDOM OF SPEECH OR RATHER ONE WITHIN FREEDOM OF PETITION, AND IF THE LATTER THEN SHOULD NOT THIS BE DIRECTED ONLY TO THE USG OR OTHER AMERICAN AUTHORITIES. THE SIMPLE ANSWER IS THAT THOSE RIGHTS GUARANTEED BY THE FREEDOMS OF SPEECH AND PETITION ARE NOT MUTUALLY EXCLUSIVE. (CONSTITUTIONAL RIGHTS TO ASSEMBLE PEACEABLY AND TO PETITION
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FOR REDRESS OF GRIEVANCES ARE INTIMATELY CONNECTED BOTH IN ORIGIN AND IN PURPOSE WITH OTHER RIGHTS OF FREE SPEECH AND FREE PRESS UNDER THE FIRST AMENDMENT, AND ALL THESE RIGHTS, THOUGH NOT IDENTICAL, ARE INTERRELATED. UNITED MINE WORKERS OF AMERICA DIST 12 V. ILLINOIS STATE BAR ASSN, 389 U.S. 217 (1967)). (CONSTITUTIONAL GUARANTEE OF FREE SPEECH AND ASSEMBLY ENCOMPASSES PEACEFUL SOCIAL PROTEST. COX V. STATE OF LOUISIANA, 379 U.S. 559 (1965)).

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SUY'S SPECULATION THAT THE FIRST AMENDMENT GUARANTEES THE RIGHT TO PETITION ONLY TO U.S. AUTHORITIES (AND NOT FOREIGN DIPLOMATS) IS MOOT, SINCE IT IS CLEAR THAT THE RIGHTS OF FREE SPEECH AND ASSEMBLY ENCOMPASS THE ACTS TO

WHICH HE REFERS.

4. SUY QUESTIONS THE SILENCE OF THE PAPER ON THE DUTY TO RESPECT THE DIGNITY OF A PERMAMENT MISSION AND ITS DIPLOMATIC PERSONNEL. HE CITES ARTICLES 22 AND 29 OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS. SUY AGAIN MISCONSTRUES THE INTENDED THRUST OF THE PAPER, SINCE IT WAS NOT INTENDED TO GIVE A COMPREHENSIVE PICTURE OF THE LAW. THE PRECISE RULES OF VIENNA CONVENTION DO NOT DIRECTLY APPLY TO PERMAMENT MISSIONS TO THE UN, BUT THE USG DOES ACCEPT IN PRINCIPLE, IN PRACTICE, AND IN OTHER AGREEMENTS (HEADQUARTERS AGREEMENT, CONVENTION ON P & I OF THE UN) OBLIGATIONS SIMILAR TO THOSE IN ARTICLES 22 AND 29.

5. SUY REMINDS US THAT, UNDER THE VIENNA CONVENTION ON THE LAW OF TREATIES, A STATE MAY NOT INVOKE ITS NATIONAL LEGISLATION AND CONSTITUTION AS A BASIS FOR NOT COMPLYING WITH ITS INTERNATIONAL OBLIGATIONS. THIS SEEMS TO SIGNIFY THAT THE U.S. HAS DONE SO IN THIS AREA. WE REJECT THE IMPLICATION AND SEE NO BASIS FOR ITS HAVING BEEN MADE.

6. RE SECTION 15 HEADQUARTERS AGREEMENT AND THE DIFFERENCES BETWEEN DISTRICT OF COLUMBIA CODE AND FEDERAL PROTECTION OF DIPLOMATS ACT: SUY IMPLIES THIS CONSTITUTES A DISPARITY BETWEEN THE PRIVILEGES AND IMMUNITIES ACCORDED UN DIPLOMATS AND THOSE DIPLOMATS ACCREDITED TO THE U.S. IN WASHINGTON, AND IS HENCE INCONSISTENT WITH UNCLASSIFIED

U.S. OBLIGATIONS UNDER THE HEADQUARTERS AGREEMENT. SUY'S REMARKS ARE OFF THE MARK, IN THAT THE DISTANCES PRESCRIBED IN THE LEGISLATION IN QUESTION DO NOT CONSTITUTE DIPLOMATIC PRIVILEGES AND IMMUNITIES. HE ALSO IMPLIES THAT WHERE THE LAW IS MORE RESTRICTIVE THE U.S. SHOWS GREATER RESPECT FOR THE DIGNITY TO DIPLOMATS, AND WHERE LESS RESTRICTIVE IT SHOWS LESS RESPECT. IN FACT, THE DIFFERENCES IN THESE PIECES OF LEGISLATION REFLECT THE DIFFERENCE IN CIRCUMSTANCES BETWEEN THE CITIES IN QUESTION, AND IN NO WAY ARE INTENDED TO SHOW LESS RESPECT FOR UN DIPLOMATS THAN FOR OTHERS.

7. SUY RAISES SEVERAL QUESTIONS REGARDING WAIVERS OF DIPLOMATIC IMMUNITY IN CRIMINAL CASES. USUN IS ADVISED TO CONSULT WITH NEW YORK AUTHORITIES AND THE U.S. ATTORNEY

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FOR NEW YORK PRACTICE ON THE QUESTIONS RAISED. PLEASE ADVISE DEPT OF THE RESULTS OF SUCH CONSULTATION.

8. IN FEDERAL COURTS, THERE IS NO STANDARDIZED FORM OR CONTENT FOR WAIVERS OF DIPLOMATIC IMMUNITY FOR DIPLOMATS APPEARING AS WITNESSES IN CRIMINAL PROCEEDINGS. A PROCEDURE WHICH WAS RECENTLY USED BY USG WAS EXCHANGE OF NOTES BY WHICH FOREIGN MISSION (USSR) AGREED TO PERMIT ITS DIPLOMAT TO TESTIFY. IT WAS UNDERSTOOD THIS ALSO MEANT DIPLOMAT WOULD PERMIT CROSS EXAMINATION ON FACTS HE TESTIFIED TO IN DIRECT EXAMINATION. USG NOTE INDICATED THAT THERE WOULD BE NO OTHER EFFECT ON HIS DIPLOMATIC IMMUNITY. (CF. STATE 2999, JAN. 7, 1974). USG IS PREPARED TO PURSUE THIS APPROACH IN FUTURE CASES, AND WILLING TO UNDERTAKE TO ADVISE (THROUGH U.S. ATTORNEY OR LOCAL PROSECUTOR) JUDGE IN CAMERA (OUTSIDE PRESENCE OF JURY) OF FACT THAT DIPLOMAT IS APPEARING VOLUNTARILY, AND EXTENT OF THE TESTIMONY HE HAS AGREED TO GIVE. NOTES EXCHANGED MAY ALSO BE MADE AVAILABLE TO JUDGE.

9. SUY REQUESTS "AN INDICATION OF THE EXTENT TO WHICH WAIVERS ARE CONSIDERED BY THE COURTS TO BE REQUIRED IN CRIMINAL CASES." OBVIOUSLY, A DIPLOMAT MAY VOLUNTARILY PRESENT HIMSELF TO THE COURT IN A CRIMINAL PROCEEDING, VOLUNTARILY TESTIFY, AND VOLUNTARILY ALLOW HIMSELF TO BE CROSS EXAMINED. HE NEED NOT HAVE WAIVED HIS IMMUNITY TO

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DO SO. HOWEVER, CONSISTENT WITH ARTICLES 31 AND 32 OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS A JUDGE MAY REQUIRE, EVEN WHERE A DIPLOMAT PRESENTS HIMSELF VOLUNTARILY, AN EXPRESS RPT EXPRESS WAIVER OF IMMUNITY.

10. IT IS NOT CLEAR TO US WHAT SUY MEANS WHEN HE REFERS TO "LIABILITY OF DIPLOMATS APPEARING AS WITNESSES TO CONTEMPT OF COURT CITATIONS." IF A DIPLOMAT IN ANY CRIMINAL PROCEEDING, HAS AGREED TO TESTIFY AS A WITNESS, AND RESPOND TO CROSS EXAMINATION, THAT IS THE EXTENT OF HIS WAIVER. WAIVERS MUST BE EXPRESS (ARTICLES 32(2) VIENNA CONVENTION), AND THEY MUST BE STRICTLY CONSTRUED. AN EXPRESS WAIVER REGARDING AN AGREEMENT TO TESTIFY AND TO PERMIT CROSS EXAMINATION DOES NOT INVOLVE AN IMPLICIT WAIVER REGARDING PROSECUTION FOR PERJURY OR CONTEMPT OF COURT.

11. SUY'S LAST QUESTION, "WHETHER A WAIVER OF IMMUNITY IN RESPECT OF COURT JURISDICTION IN A CRIMINAL CASE MAY BE HELD TO EXTEND TO THE EXECUTION OF JUDICIAL DECISIONS IN THE CASE," IS CONFUSING . IT IS RELEVANT ONLY WHERE THE DIPLOMAT'S IMMUNITY HAS BEEN WAIVED

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SO THAT HE MAY APPEAR AS A DEFENDANT IN A CRIMINAL CASE.
IF SUCH A CASE WERE TO ARISE, IT SEEMS LIKELY THAT ANY
WAIVER ISSUED WOULD BE BROADLY ENOUGH WORDED TO EXTEND
TO THE EXECUTION OF THE JUDICIAL DECISION. KISSINGER

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